Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
	)	
Implementation of the	)	CC Docket No. 96-115
Telecommunications Act of 1996	)	
	)	
Telecommunications Carriers' Use	)	
of Customer Proprietary Network	)	
Information and Other Customer Information;	)	
	)	
Implementation of the Non-Accounting	)	CC Docket No. 96-149
Safeguards of Sections 271 and 272 of the	)	
Communications Act of 1934, As Amended	)	

Clarification Order and Second Further Notice
Of Proposed Rulemaking

COMMENTS OF THE COMPETITION POLICY INSTITUTE

Ronald J. Binz, President
Debra R. Berlyn, Executive Director
888 17th Street, N.W., Suite 908
Washington, D.C. 20006
Phone: 202-835-0202
Fax: 202-835-1132

October 30, 2001

COMMENTS OF THE COMPETITION POLICY INSTITUTE

The Competition Policy Institute ("CPI")[1] respectfully submits these comments in response to the Commission's Clarification Order and Second Further Notice of Proposed Rulemaking ("NPRM") in these dockets.

I. INTRODUCTION AND SUMMARY

The consumer privacy issues entwined with the Commission's CPNI rules have been a matter of great concern to CPI since 1996. CPI supported the Commission's proposed rules in our comments in the original proceeding; we intervened in the appeal and filed briefs before the United States Court of Appeals for the Tenth Circuit when US WEST appealed those rules; we sought Reconsideration in the Court of Appeals and succeeded in obtaining an *en banc* consideration of the panel's decision; finally, we filed an unsuccessful petition seeking *certiorari* review of the opinion by the United States Supreme Court. CPI appreciates the opportunity to comment as the Commission considers the status of its rules in light of the vacatur order of the Appeals Court.

As an initial matter, CPI supports the Commission's interpretation of the Court's action as having vacated only that portion of the *CPNI Rules* that concerns whether a carrier must use an "opt-in" regime in obtaining a customer permission to use or release confidential information. Thus, the main issue before the Commission is whether it may, following a more complete consideration of the two options, reassert its rule requiring opt-in. If, instead, the Commission determines to abandon the opt-in requirement and permit carriers to employ an "opt-out" regime,

A.

[1] CPI is a non-profit organization that advocates state and federal regulatory policies to bring competition to energy and telecommunications markets in ways that benefit consumers.

other portions of the Commission's rules will have to be modified to ensure that the paramount rights – consumers' rights to privacy – are protected.

In the comments that follow, CPI makes the following three points: First, an opt-in regime is the only approach that safeguards consumers' privacy. While it might be argued that, under ideal conditions, "opt-out" affords consumers a chance to protect their privacy, an opt-out regime is fraught with problems that render it ineffective in protecting privacy. Carriers that use opt-out will not fulfill their statutory duty to protect the confidentiality of customer information under 47 USC 222, and the Commission should not countenance its use. The intrinsic failings of opt-out as a means to protect privacy are on display in the ongoing implementation of the Gramm-Leach-Bliley (GLB) financial information privacy rules. That process is shaping up to be a costly disappointment. Two-thirds of consumers are not reading the GLB notices and it is doubtful that those who do read the notices are able to battle through their impenetrable language. This Commission need not subject telecommunications consumers to the same fate. There is no requirement in the Telecommunications Act of 1996 that opt-out must be used and the Court of Appeals ruling does not require it. By finding that opt-out does not adequately protect consumer privacy, the Commission can re-adopt its rules requiring opt-in, and do so in a way that complies with the opinion of the Court's opinion.

Second, if the Commission abandons its opt-in rule in favor of allowing carriers to use the negative option of opt-out to ascertain a consumer's privacy preferences, the Commission should at least revise its rules to segregate the most sensitive information. A carrier's use of details of a consumer's calling patterns – the telephone numbers of called parties, the identity of called party, the time and date of such telephone calls – should not be construed as protected commercial free speech. Such strongly private information is not needed by telecommunications

carriers to market to their customers and should not be lumped in with such information as the number of telephone lines a customer owns or whether lines are equipped with Call Forwarding.

Third, if the Commission permits carriers to use opt-out to determine customers' privacy preferences, it should specify in *complete detail* the form and content of the notice. Carriers that design and mail opt-out notices have a perverse incentive to make the notices difficult to recognize and hard to understand. Further, the Commission should specify *in complete detail* the options a carrier may use to enable a consumer to reply to an opt-out notice, down to the detail of prepaid postage and how easily the form may be detached and sent back. Lastly, the carriers should be required to re-notify non-respondents frequently, since a non-response cannot be assumed to be assent.

II. THE COMMISSION HAS STRONG LEGAL AND POLICY GROUNDS TO REQUIRE CARRIERS TO USE AN "OPT-IN" REGIME TO ASCERTAIN A CUSTOMER'S PRIVACY PREFERENCES.

Since the Court of Appeals did not find Section 222 of the Communications Act to be unconstitutional, it remains for the Commission to determine how the purposes of the statute can be fulfilled in a way that is least restrictive to the commercial speech rights of telecommunications carriers. The Commission is <u>not</u> required by the Court to balance the interests of consumers with those of telecommunications carriers. It simply must examine alternate modes of obtaining customer approval of the release of CPNI and select the mode with the smallest effect on commercial free speech.

Following a thorough examination of the issues, CPI believes that the Commission will conclude that an "opt-out" regime is not an effective means of safeguarding the privacy of extremely sensitive private information about consumers as required by Section 222 of the Communications Act. With opt-out eliminated from contention, the Commission may conclude that <u>opt-in the least restrictive means to effectuate the statute and serve the governmental purpose</u>

expressed there. Such a consideration will satisfy the Court's concern that the Commission failed to give sufficient consideration to opt-out as a means of obtaining customer approval. To stress: the Court did not rule that opt-out was constitutionally required, only that the Commission did not give full consideration to this alternate means of obtaining approval. If the Commission determines that opt-out is not effective, it may legally require opt-in in its rules.

On policy grounds, only opt-in makes sense as a means of ascertaining that a carrier has obtained the "approval of the customer" to use, disclose, or permit access to individually identifiable customer proprietary network information. A non-response from a customer cannot reasonably be interpreted as acquiescence. On what basis could a carrier conclude that it has obtained a customer's approval when the notice might have been unseen, ignored, misunderstood or lost?

In the NPRM the Commission noted that the financial services industry is regulated with respect to the disclosure of nonpublic information by the Gramm-Leach-Bliley Act (GLB). Generally, GLB requires certain federal agencies, such as the Federal Trade Commission, to adopt rules under which certain financial institutions must notify customers of their privacy policies and may obtain (under an opt-out regime) customers' permission to share nonpublic information with affiliates and non-affiliated third parties. GLB was passed by Congress in 1999 following years of negotiation among competing interests, including industry trade associations and privacy advocates. By the notification deadline of July 1, 2001, an estimated one billion pieces of mail has gone out to American consumers, from banks, credit unions, brokerage firms, mortgage companies, etc.[2]

A. _____

[2] GLB is not the only major federal privacy legislation to be implemented in recent years. In the same timeframe that Congress passed GLB, the Department of Health and Human Services (HHS) promulgated final rules to implement sections of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Congress had passed comprehensive health information privacy legislation in 1996 and gave HHS until August 1999 to adopt final rules. In contrast to the GLB opt-out regime, HHS's rules require affected healthcare providers to obtain a consumer's affirmative consent (opt-in) before disclosing covered information.

Data about the effectiveness of the opt-out notification required by GLB is beginning to appear. The American Bankers Association recently released the results of a survey that showed only 36 percent of banking customers had read the GLB privacy notice. Twenty-two percent said they had not read it and 41 percent did not recall having received the notice. A copy of ABA's June 7, 2001 news release announcing the survey results is appended to these comments as Attachment A.[3]

CPI is not aware of any official tallying of the results of the massive GLB notice mailing. However, press reports suggest that consumer response to the notices is quite small. The *Kansas City Star* reports that only about five percent of consumers responded to the GLB mailing. One bank in Kansas City reports a 1.6 percent response rate on a mailing of 300,000 notices. The *Arizona Republic* also reports little consumer response to the GLB mailing: the National Bank of Arizona reports a low response rate at its call center set up to receive customer inquiries, and a Scottsdale credit union has had a response rate of only 0.2 percent -- 100 responses to a mailing of 45,000. Copies of these news reports are included as Attachment B.

This information suggests strongly that opt-out notification is an ineffective means to ascertain whether a consumer wishes to permit a vendor (telecommunications or financial services) to release sensitive information. Of course, this interpretation of the GLB response could be debated, but only if one is willing to believe that the vast majority of customers don't care enough about the privacy of financial information to locate and return the form. We decline to accept this view. It seems to us to be far more likely that consumers have an expectation that their financial institutions would not be able to release such information unless the customer had

A. ———————————————————————————————

[3]Despite the result that sixty-four percent of customers did not see or did not read the GLB notice, the ABA spins the story as good news: "It's good to know that consumers know these privacy notices exist."

affirmatively approved of its release. In this atmosphere, a "negative option" notification will not be effective, either for financial data or for CPNI.

III. IF THE COMMISSION ALLOWS CARRIERS TO USE AN OPT-OUT REGIME TO OBTAIN CUSTOMERS' APPROVAL, IT SHOULD MODIFY ITS DEFINITIONS AND SEGREGATE THE MOST SENSITIVE INFORMATION FOR SPECIAL TREATMENT.

As described above, CPI thinks that the Commission is on firm legal and policy grounds to reassert its rule and require carriers to use an opt-in regime to ascertain customers' preferences for handling CPNI. If, instead, the Commission permits carriers to use an opt-out method, we recommend two steps the Commission should take to stem the worst damage such a policy would inflict on consumers' privacy rights. The first step would be to permit carriers to use opt-out only for the least sensitive of the various kinds of information that comprises CPNI.

The 10th Circuit court vacated the Commission's CPNI rules because it found the Commission's rules might impermissibly restrict a carrier's commercial free speech right to communicate with (market to) its customers. As we argued in our petition for *certiorari* review to the Supreme Court, we disagree strongly with that finding. Nevertheless, it follows from the Appeals Court's logic that certain information contained within the definition of CPNI does not fall under the heading of information generally needed to "communicate" with one's customers.

It is inconceivable to us, for example, that a carrier could reasonably claim it needs to use (or disclose to others) such strongly private information as a customer's calling patterns – whom the person calls, at what times and with what frequency. Besides the fact that such information would be hard to link to any legitimate marketing effort of a *telecommunications* carrier, it is extremely volatile personal information. By using existing databases, a third party could easily transform calling patterns into a detailed profile of the person: uses a particular internet company, orders Pizza from Domino's, is calling realtors, buys prescription drugs at Rite-Aid in

Dupont Circle, has hearing problems, has credit problems, regularly calls a mental health clinic, etc. Yet such profoundly private information as calling patterns, both local and long distance, is included in CPNI that could be used or disclosed without a customer's explicit permission if the customer fails to respond the opt-out notice.

If these examples sound improbable, consider the current controversies about marketers who build customer profiles by tracking a consumer's online purchases, inquiries and even mouse-clicks on the Web. In this case, "cookies" (still unfamiliar to consumers who must "opt-out" to avoid their effects), are used to build a profile of the unwary consumer. In general, these profiles are linked only to computers on the Web and not to individual persons, although that too may happen when consumers reveal email addresses, phone numbers, mailing addresses or other personal information in the course of using the Web. The telephone user profile described above would be much more valuable: it would be linked to the names and street address of persons in a household with a given telephone number.

Today's regulated telecommunications carriers would probably argue they would never use CPNI for such purposes or sell it to entities that will use it in that way. Even if this is so, consumers are at risk if such information is ever released: it could easily pass from a conscientious company to an entity that builds "lists" and proliferates the information. The Commission should not expose consumers to that risk.

CPI recommends that the Commission require at least this highly sensitive information be subject to stringent opt-in requirements, even if the Commission permits carriers to use or disclose other information under an opt-out regime. As a starting point, this segregation could be accomplished by permitting an opt-out notice to apply only to such information as the list of

telecommunications services that a consumer purchases. All other information, e.g., data that describes how the services are used, should be off limits for opt-out approval.

IV. IF THE COMMISSION PERMITS CARRIERS TO USE AN OPT-OUT REGIME TO OBTAIN CUSTOMER APPROVAL TO USE OR DISCLOSE CPNI, THE COMMISSION SHOULD SPECIFY, BY RULE, THE EXACT FORM AND WORDING OF THE OPT-OUT NOTIFICATION.

As discussed above, the response rate to the privacy notices under Gramm-Leach-Bliley has been low. Undoubtedly, the opt-out regime contributes to this effect: many consumers are accustomed to discarding junk mail stuffed into bills and don't normally expect that something affirmative will happen (they'll assent to disclosure) if they throw away a long, tedious written notice. This sentiment was captured by Phyllis Rowe, president of the Arizona Consumers Council in the *Arizona Republic* article referenced earlier. Ms. Rowe was making the point that "negative option" notices are unfamiliar to consumers:

> The bad thing about these privacy notices is that the consumer has to take action and it shouldn't be that way. The fact that we have to say that we don't want them to do this is not the usual way that we do things.

An additional contributing factor to the low response rate with GLB appears to be the form of the notice used by financial institutions. While financial legalese is probably naturally difficult to understand, the GLB notices raised mumbo-jumbo to a high art.

A coalition of consumer organizations, concerned about the unintelligible character of some of the GLB notices, has petitioned the Federal Trade Commission to undertake a rulemaking on the content of the notice. CPI is concerned that telecommunications consumers will suffer the same fate if the Commission allows carriers to use opt-out, and recommends that the Commission take prophylactic steps to avoid the same problem.

Ordinarily, CPI would not recommend that regulators take the unusual step of dictating to carriers the precise content of a notice. However, when using an opt-out notice, a carrier has an unalloyed incentive to make the notice inconspicuous and difficult to understand. If a customer is have a fighting chance to understand what's at stake with a CPNI opt-out notice, this incentive of the carriers must be offset by the Commission's regulations. We see no choice except for the Commission to require the exact wording of the notice if the GLB mumbo-jumbo problem is to be avoided. CPI concurs with the consumer organizations that are urging the FTC to require future GLB notices to speak in unambiguous language. In addition, the Commission should specify the manner in which carriers must make reply possible. Notices should include return postage paid and be of such a form that they may easily be detached from the notice and returned to the carrier. Carriers should be required to employ toll-free numbers staffed by unaffiliated personnel and notify consumers conspicuously in the notice that they will be allowed to opt-out by phone.

V. CONCLUSION

In its *CPNI Rules*, the Commission acted to protect the privacy rights of consumers. The Commission correctly determined that the governmental purpose represented in Section 222 of Communications Act would be served if carriers were required to obtain a customer's affirmative approval before using or disclosing CPNI. The Court of Appeals for the 10th Circuit found that the Commission had not given sufficient consideration to other forms of notice. The Commission should address the Court's concern by fully considering whether an "opt-out" regime adequately serves this governmental purpose. CPI is confident the Commission will find "opt-out" to be lacking and, on the basis of a fuller record, re-adopt its "opt-in" requirement.

If, instead, the Commission decides to abandon its "opt-in" requirement, it should modify other features of the *CPNI Rules* to segregate the most sensitive information within the scope of CPNI, prohibiting such information from being subject to disclosure without affirmative customer approval. Further, the Commission should dictate the precise form and handling of the opt-out notice sent to customers and require repeated re-notification of customers who do not respond to opt-out notices.

Respectfully submitted,

COMPETITION POLICY INSTITUTE

Ronald J. Binz, President
Debra R. Berlyn, Executive Director

Competition Policy Institute
888 17th Street, NW, Suite 908
Washington, D.C. 20006

October 29, 2001

Attachment A

ABA SURVEY SHOWS NEARLY ONE OUT OF THREE CONSUMERS READ THEIR BANKS' PRIVACY NOTICES

Survey also finds 63 percent of consumers pay $3 or less on monthly banking services

WASHINGTON, June 7 – Thirty-six percent of consumers say they have read their banks privacy policy, according to a recent survey by the American Bankers Association (ABA).

Of those interviewed, 41 percent did not recall receiving or had not received their privacy disclosure and 22 percent said they had received but not read their notice. Financial institutions are required by law to send notices – by July 1 and annually thereafter – outlining how they manage private customer information.

"It's good to know that consumers are aware that these privacy notices exist," said Donald G. Ogilvie, executive vice president of the ABA. "These documents are not junk mail. We hope more folks will take the time to read their notices and contact their bank if they have any questions or concerns."

The survey of 1,000 consumers, conducted for ABA by Ipsos Reid the weekend of May 18, also asked consumers if they think their bank does a good job protecting the confidentiality of their information. The vast majority – 83 percent – of those surveyed agreed (45 percent strongly agreed; 38% somewhat agreed).

"Trust is the foundation of the banking relationship," said Ogilvie. "Consumers trust their banks, and we take our responsibility to maintain that trust very seriously."

Survey participants were also asked how much they spend each month on banking services, including checking account maintenance and ATM access fees. Choices ranged from "nothing" to "more than $10 dollars." Nearly half (49 percent) reported paying no fees at all, while another 14 percent said they pay $3 or less.

"At $3.00 a month, a bank customer would pay less than $40 per year – that's much less than the rate for home newspaper delivery, cable or internet service, cell phone service, and other 'basic necessities' for many households," said Ogilvie. "Money in the bank is not only federally insured, it's also accessible 24/7 from anywhere in the world. At $3.00 a month, that's an incredible value."

The American Bankers Association brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership–which includes community, regional and money center banks and holding companies, as well as savings associations, trust companies and savings banks–makes ABA the largest banking trade association in the country. ABA can be found on the Internet at www.aba.com.

QUESTIONS ASKED IN NATIONAL TELEPHONE SURVEY OF 1,000 CONSUMERS

May 18-20, 2001 by Ipsos Reid

Q: Banks and other financial institutions have been mailing out notices describing their privacy policies for their customers. Respondents said:

- 36 % have read the notice
- 22% have received but not read the notice
- 41% don't recall receiving the notice
- 1% don't know/not sure

Q: Your bank does a good job protecting the confidentiality of your information. Respondents said:

- 45% strongly agree
- 38% somewhat agree
- 7% somewhat disagree
- 4% strongly disagree
- 6% don't know/not sure

Q: How much would you estimate you spend for banking services (including account and ATM fees) each month? Respondents said:

- 49% -- nothing
- 14% -- $3.00 or less
- 12% -- $3.00-$6.00 a month
- 7% -- $6.00-$8.00 a month
- 5% -- $8.00-$10.00 a month
- 9% -- More than $10 a month
- 4% -- don't know/not sure

# # #

Attachment B

Privacy notices generate little consumer response

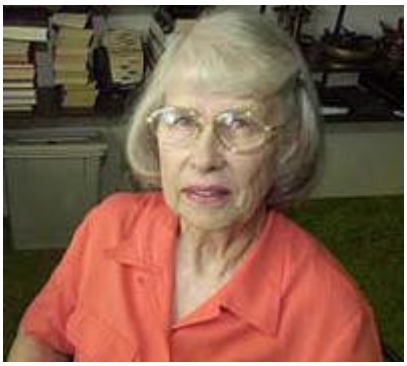
Joshua Trujillo/The Arizona Republic

David Jefferies, a Nissan salesman in Phoenix, cast aside his privacy notices because "they're long pieces of mail."

Jennifer Gordon
The Arizona Republic
July 24, 2001 12:00:00

Unless you've been away on vacation for several months, your mailbox has been flooded with privacy notices from credit card companies, banks and other financial firms.

If you're like most consumers, you gave them a passing glance at best.
In a recent American Bankers Association survey of 1,000 consumers, two out of three people said they either did not remember or had not received the federally mandated notices, or got them and didn't read.
"People aren't paying any attention to them at all," said Phyllis Rowe, president of the Arizona Consumers Council. "I think it's ridiculous that we have to do it in the first place."
With the passing of the July 1 deadline for sending out the first of what will be annual notices, she and other consumer and privacy advocates are calling for changes in future mailings, if not a new, more user-friendly system.
The mailings describe the firms' privacy policies and, importantly, allow consumers to restrict the company from sharing their non-public personal information with third parties.



Michael Ging/The Arizona Republic

Phyllis Rowe, president of the Arizona Consumers Council, says few people are paying attention to the privacy notices.

"The bad thing about these privacy notices is that the consumer has to take action and it shouldn't be that way," Rowe said. "The fact that we have to say that we don't want them to do this is not the usual way that we do things."
Even if people read the notices they might not fully understand their rights because they are difficult to read, she said. A study of 34 privacy notices by the Privacy Rights

Clearinghouse found that on average the notices were written at a third- to fourth-year college reading level, not at the junior-high-level literacy experts recommend for materials sent to the general public.
Also, the statements averaged 24 words per sentence, more than the 15 to 20 words recommended.
"It just doesn't say in clear English that they (consumers) have to take some action," Rowe said.
"By and large it's hidden somewhere and people are not aware that they need to say 'Hey, we don't want to do that,' " Rowe said.
Lisa Sapanaro of Phoenix was among the confused. She read the notice from her car loan provider and set it aside to mail in later.
"I don't fully understand how it affects me," she said. "I just know I don't want my information out there."
Some legislators also feel the notices do not fulfill the intent of the 1999 law behind them.
Rep. John LaFalce, D-N.Y., ranking member of the House Financial Services Committee, sent a letter to regulators in June charging that the notices blended in with other promotional materials, confused consumers and downplayed the consumer's right to opt out.
"While a number of financial institutions have worked constructively to create effective privacy notices and opt-out vehicles, too many others appear to have used the privacy notices to confuse their privacy obligations and engage in inappropriate marketing," said the letter, which was cosigned by 11 other representatives.
Even some people in the business are befuddled by the notices. Nissan car salesman David Jefferies examines customer credit reports every day and knows that having the correct information is crucial.
But when he received notices in the mail describing how his information is shared, Jefferies cast them aside because "they're long pieces of mail."
"I'm not afraid of personal information seeping out," he said. "I know companies share information."
The American Bankers Association and other industry groups defend their policy and blame vague regulations. Edward Yingling, ABA's executive director of government relations, praised the industry's effort.
"These notices put consumers in the driver's seat," Yingling said.
Although the July 1 mailing deadline has passed, there is no time limit for consumers to stop their information from being shared. If you missed or misplaced the notice, Web sites such as www.privacyrightsnow.com provide information about consumers' rights and even include a form letter to send to companies.
Many financial companies also have set up call centers to handle questions about privacy policies. So far, call volume has been low.
National Bank of Arizona does not share information, but it included an opt-out provision because of its parent company.
Bank customers had three options: to ask the company not to share information with affiliates, with unaffiliated third parties, or to protect information from anyone. Since the notices were delivered the call center has received five to 10 calls a day and in total several hundred people - out of the 45,000 who received their notice - protect their information from everyone, a company spokesman said.

Doug Lake, executive vice president of the Motorola Employees Credit Union, attributes the low call volume to the media coverage and the flurry of notices appearing in mailboxes.

Although 54,000 consumers received notices from the Scottsdale-based credit union, barely more than 100 people responded.

Reach the reporter at jennifer.gordon@arizonarepublic.com or (602) 509-3296.

Back to Article

Privacy notice deadline passes with a yawn from many consumers

By PAUL WENSKE - The Kansas City Star
Date: 07/04/01 22:15

Many Americans so far are treating the millions of financial privacy notices sent their way recently with all the enthusiasm they might show for a truckload sale of doorstops.

The deadline for banks and other financial institutions to disclose their privacy policies and give customers a say in how their personal information is protected passed Sunday.

Nearly a billion pieces of mail were sent out nationally, officials said.

The notices told customers they could exercise "opt-out" provisions that prohibit financial institutions from sharing their nonpublic records with unaffiliated businesses, such as telemarketers, who might profit from the information.

But despite privacy alarms sounded by many consumer groups, most Americans reacted with yawns.

Fewer than 5 percent of consumers have responded, officials said, though the number could grow because consumers don't have any firm deadline to respond to the mailings.

Some banking and consumer officials believe the low response might be because of consumer confusion. Others say most consumers are comfortable with current privacy protections.

For example, UMB Bank in Kansas City mailed out more than 300,000 privacy

notices but, as of Monday, only about 4,700 customers responded, or a little more than 2 percent.

"People should be aware of the mailings," said Jill Stockham, a UMB spokeswoman. "Privacy is all over the news. I can't imagine anyone being oblivious to it."

The privacy disclosures were mandated by the Gramm-Leach-Bliley Act. The

legislation allows banks, brokerage firms, insurance companies and other institutions to merge for the first time in decades, resulting in the potential for amassing large amounts of personal records.

Congress wanted to let consumers limit how much private information gets into the hands of telemarketers, direct mailers and others who collect names of people who might buy their products and services.

Banking and investment groups say they support the notice requirements. It gives them a way to assure customers their accounts, credit reports and loan records are safeguarded.

"We don't have a privacy opt-out because we don't sell or share information with unaffiliated parties," said Christy Campbell, marketing officer for Commerce Bancshares Inc.

Max Cook, president of the Missouri Bankers Association, said: "That's the essence of the banking industry anyway. The banking business is built on the premise of trust and security."

Chris Doyle, a spokesman for American Century Investments, said the Kansas City mutual fund company sent out more than 2 million notices that said it did not trade personal information with unaffiliated companies. He said American Century had received "only a few calls so far."

But if many consumers treated the notices as junk mail, other consumers said some mailings were confusing, hidden amid other pieces of paper or hard to decipher.

"They don't make any of this very clear," said Pamela Manning of Kansas City. "They make it seem that it's not too important."

She said she received about seven notices, some of which she inadvertently threw away. She said she was going back to respond to all the notices.

"I'm very concerned about what's happening with privacy," she said. "It irks me that my name could be sold to anyone. They should get our permission. We shouldn't have to tell them."

Consumer groups had asked Congress to require the financial institutions to get permission from consumers to share or trade their personal financial information.

But industry officials convinced Congress that constantly getting permission from consumers would strangle commerce. They said ATM machines, grocery store savings cards, and debit and credit cards, which benefit consumers, depend on sharing information.

Consumer advocates say there is a flip side.

"Our concern is for the widow who is a beneficiary of an insurance policy," said David Butler, a spokesman for Consumers Union. "Information about her could be shared with a broker who would bombard her with marketing pitches."

Consumer groups also worry that consumers aren't getting the message or understanding it, noting that some notices are written in small print and at a graduate school level.

"When you set it up so that people have to take an affirmative stand to opt out, many don't do it," said Mat All, assistant Kansas insurance commissioner.

Tena Friery, research director for the Privacy Rights Clearinghouse, said

her group was getting many calls from confused consumers.

"People are asking: "What do we do? And how do we go about it?" she said.

She said some consumers mistakenly thought the July 1 deadline pertained to them.

"Consumers have a continuing right to opt-out," she said. "This applies even if notices have been lost or, as is common, mistaken for junk mail and thrown in the trash."

Friery advised consumers who no longer had their notices to contact their financial institutions and ask for copies of their privacy policies, which should explain the process for a consumer to opt-out of agreements to share or trade their information with nonaffiliates.

Consumers can also find sample "opt-out" letters at the consumer group's Web site at **www.privacyrights.org/fs/fs24a-letter.htm**. You can call the Privacy Rights Clearinghouse at (619) 298-3396.

To reach Paul Wenske, consumer affairs reporter, call **(816) 234-4454** or send e-mail to **pwenske@kcstar.com**
